



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

WMP
Docket No: 3322-02
10 October 2002

[REDACTED]

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This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10 of the United States Code section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 9 October 2002. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 10 November 1982 for four years at age 17. Your record reflects that you served without incident until 14 July 1983, when you were counseled concerning your repeated periods of unauthorized absence and warned that any further absences could result in nonjudicial punishment (NJP). On 3 August 1983, your record reflects that you were arrested for driving under the influence of alcohol, however, there is no indication in your record that any further action was taken.

Although your record further reflects that you were an unauthorized absentee from 18 to 20 October 1983, a period of two days, it does not indicate if disciplinary action was taken. On 5 January 1984 you were counseled concerning public intoxication and conduct unbecoming a Marine, and warned

that further misconduct on your part could result in disciplinary action.

On 6 March 1984 you submitted a request for separation in lieu of trial by court-martial for five instances of failure to go to your appointed place of duty, failure to obey a lawful order, and driving under the influence of alcohol. Prior to submitting this request you conferred with a qualified military lawyer and were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. On 21 March 1984 your request for separation in lieu of a trial by court-martial was approved by the discharge authority. As a result of such action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. You received the other than honorable discharge on 25 April 1984.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity and your contention you were being "railroaded" for minor violations. However, the Board concluded that the other than honorable discharge was appropriate given your request for discharge to avoid trial for five instances of failure to be at your appointed place of duty, failure to obey a lawful, your second instance of driving under the influence of alcohol. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and you should not be permitted to change it now. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that

a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director